

Calendar No. 805

110TH CONGRESS
2D SESSION

S. 2814

[Report No. 110–373]

To authorize the Secretary of the Interior to provide financial assistance to the Eastern New Mexico Rural Water Authority for the planning, design, and construction of the Eastern New Mexico Rural Water System, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 3, 2008

Mr. BINGAMAN (for himself and Mr. DOMENICI) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

JUNE 16, 2008

Reported by Mr. BINGAMAN, without amendment

A BILL

To authorize the Secretary of the Interior to provide financial assistance to the Eastern New Mexico Rural Water Authority for the planning, design, and construction of the Eastern New Mexico Rural Water System, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Eastern New Mexico
3 Rural Water System Authorization Act”.

4 **SEC. 2. DEFINITIONS.**

5 In this Act:

6 (1) **AUTHORITY.**—The term “Authority” means
7 the Eastern New Mexico Rural Water Authority, an
8 entity formed under State law for the purposes of
9 planning, financing, developing, and operating the
10 System.

11 (2) **ENGINEERING REPORT.**—The term “engi-
12 neering report” means the report entitled “Eastern
13 New Mexico Rural Water System Preliminary Engi-
14 neering Report” and dated October 2006.

15 (3) **PLAN.**—The term “plan” means the oper-
16 ation, maintenance, and replacement plan required
17 by section 4(b).

18 (4) **SECRETARY.**—The term “Secretary” means
19 the Secretary of the Interior.

20 (5) **STATE.**—The term “State” means the State
21 of New Mexico.

22 (6) **SYSTEM.**—

23 (A) **IN GENERAL.**—The term “System”
24 means the Eastern New Mexico Rural Water
25 System, a water delivery project designed to de-
26 liver approximately 16,500 acre-feet of water

per year from the Ute Reservoir to the cities of Clovis, Elida, Grady, Melrose, Portales, and Texico and other locations in Curry, Roosevelt, and Quay Counties in the State.

(B) INCLUSIONS.—The term “System” includes the major components and associated infrastructure identified as the “Best Technical Alternative” in the engineering report.

(7) UTE RESERVOIR.—The term “Ute Reservoir” means the impoundment of water created in 1962 by the construction of the Ute Dam on the Canadian River, located approximately 32 miles upstream of the border between New Mexico and Texas.

SEC. 3. EASTERN NEW MEXICO RURAL WATER SYSTEM.

(a) FINANCIAL ASSISTANCE.—

(1) IN GENERAL.—The Secretary may provide financial and technical assistance to the Authority to assist in planning, designing, conducting related preconstruction activities for, and constructing the System.

(2) USE.—

(A) IN GENERAL.—Any financial assistance provided under paragraph (1) shall be obligated and expended only in accordance with a

1 cooperative agreement entered into under sec-
2 tion 5(a)(2).

3 (B) LIMITATIONS.—Financial assistance
4 provided under paragraph (1) shall not be
5 used—

6 (i) for any activity that is inconsistent
7 with constructing the System; or

8 (ii) to plan or construct facilities used
9 to supply irrigation water for irrigated ag-
10 ricultural purposes.

11 (b) COST-SHARING REQUIREMENT.—

12 (1) IN GENERAL.—The Federal share of the
13 total cost of any activity or construction carried out
14 using amounts made available under this Act shall
15 be not more than 75 percent of the total cost of the
16 System.

17 (2) SYSTEM DEVELOPMENT COSTS.—For pur-
18 poses of paragraph (1), the total cost of the System
19 shall include any costs incurred by the Authority or
20 the State on or after October 1, 2003, for the devel-
21 opment of the System.

22 (c) LIMITATION.—No amounts made available under
23 this Act may be used for the construction of the System
24 until—

25 (1) a plan is developed under section 4(b); and

1 (2) the Secretary and the Authority have com-
 2 plied with any requirements of the National Envi-
 3 ronmental Policy Act of 1969 (42 U.S.C. 4321 et
 4 seq.) applicable to the System.

5 (d) TITLE TO PROJECT WORKS.—Title to the infra-
 6 structure of the System shall be held by the Authority or
 7 as may otherwise be specified under State law.

8 **SEC. 4. OPERATION, MAINTENANCE, AND REPLACEMENT**
 9 **COSTS.**

10 (a) IN GENERAL.—The Authority shall be responsible
 11 for the annual operation, maintenance, and replacement
 12 costs associated with the System.

13 (b) OPERATION, MAINTENANCE, AND REPLACEMENT
 14 PLAN.—The Authority, in consultation with the Secretary,
 15 shall develop an operation, maintenance, and replacement
 16 plan that establishes the rates and fees for beneficiaries
 17 of the System in the amount necessary to ensure that the
 18 System is properly maintained and capable of delivering
 19 approximately 16,500 acre-feet of water per year.

20 **SEC. 5. ADMINISTRATIVE PROVISIONS.**

21 (a) COOPERATIVE AGREEMENTS.—

22 (1) IN GENERAL.—The Secretary may enter
 23 into any contract, grant, cooperative agreement, or
 24 other agreement that is necessary to carry out this
 25 Act.

1 (2) COOPERATIVE AGREEMENT FOR PROVISION
2 OF FINANCIAL ASSISTANCE.—

3 (A) IN GENERAL.—The Secretary shall
4 enter into a cooperative agreement with the Au-
5 thority to provide financial assistance and any
6 other assistance requested by the Authority for
7 planning, design, related preconstruction activi-
8 ties, and construction of the System.

9 (B) REQUIREMENTS.—The cooperative
10 agreement entered into under subparagraph (A)
11 shall, at a minimum, specify the responsibilities
12 of the Secretary and the Authority with respect
13 to—

14 (i) ensuring that the cost-share re-
15 quirements established by section 3(b) are
16 met;

17 (ii) completing the planning and final
18 design of the System;

19 (iii) any environmental and cultural
20 resource compliance activities required for
21 the System; and

22 (iv) the construction of the System.

23 (b) TECHNICAL ASSISTANCE.—At the request of the
24 Authority, the Secretary may provide to the Authority any
25 technical assistance that is necessary to assist the Author-

1 ity in planning, designing, constructing, and operating the
2 System.

3 (c) BIOLOGICAL ASSESSMENT.—The Secretary shall
4 consult with the New Mexico Interstate Stream Commis-
5 sion and the Authority in preparing any biological assess-
6 ment under the Endangered Species Act of 1973 (16
7 U.S.C. 1531 et seq.) that may be required for planning
8 and constructing the System.

9 (d) EFFECT.—Nothing in this Act—

10 (1) affects or preempts—

11 (A) State water law; or

12 (B) an interstate compact relating to the
13 allocation of water; or

14 (2) confers on any non-Federal entity the abil-
15 ity to exercise any Federal rights to—

16 (A) the water of a stream; or

17 (B) any groundwater resource.

18 **SEC. 6. AUTHORIZATION OF APPROPRIATIONS.**

19 (a) IN GENERAL.—In accordance with the adjust-
20 ment carried out under subsection (b), there is authorized
21 to be appropriated to the Secretary to carry out this Act
22 an amount not greater than \$327,000,000.

23 (b) ADJUSTMENT.—The amount made available
24 under subsection (a) shall be adjusted to reflect changes
25 in construction costs occurring after January 1, 2007, as

1 indicated by engineering cost indices applicable to the
2 types of construction necessary to carry out this Act.

3 (c) NONREIMBURSABLE AMOUNTS.—Amounts made
4 available to the Authority in accordance with the cost-
5 sharing requirement under section 3(b) shall be non-
6 reimbursable and nonreturnable to the United States.

7 (d) AVAILABILITY OF FUNDS.—At the end of each
8 fiscal year, any unexpended funds appropriated pursuant
9 to this Act shall be retained for use in future fiscal years
10 consistent with this Act.

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